



DEPARTMENT OF THE NAVY

OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
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SECNAVINST 5430.92C

OGC

11 JUN 2018

SECNAV INSTRUCTION 5430.92C

From: Secretary of the Navy

Subj: ASSIGNMENT OF RESPONSIBILITIES TO COUNTERACT ACQUISITION
FRAUD, WASTE, AND RELATED IMPROPRIETIES

Ref: (a) DoD Instruction 7050.05 of 12 May 2014
(b) SECNAV M-5214.1, Department of the Navy Information
Requirements (Reports) Manual
(c) Federal Acquisition Regulation (FAR) Subpart 9.4,
Debarment, Suspension, and Ineligibility
(d) Department of Defense Federal Acquisition Supplement
(DFARS) Subpart 209.4, Debarment, Suspension, and
Ineligibility
(e) E.O. 12549
(f) Public Law 110-417
(g) DoD Instruction 5505.15 of 16 June 2010
(h) Public Law 112-239
(i) Navy and Marine Corps Acquisition Regulation
Supplement (NMCARS) Subpart 5209.4, Debarment,
Suspension, and Ineligibility
(j) 41 U.S.C. § 2313
(k) SECNAVINST 5430.25E
(l) DoD Instruction 5505.02 of 29 August 2013
(m) DoD Instruction 5525.07 of 18 June 2007
(n) DoD Instruction 5240.04 of 1 April 2016
(o) DoD Instruction 5505.03 of 24 March 2011
(p) SECNAVINST 5430.107
(q) SECNAVINST 7510.7G
(r) SECNAVINST 5430.27D
(s) SECNAVINST 5430.57G

Encl: (1) Definitions
(2) Responsibilities

1. Purpose. To affirm the Department of Navy (DON) policy to eliminate acquisition fraud, waste, and related improprieties from the DON and, in implementation of this policy, to set

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forth responsibilities of DON officials, DON personnel, and the DON Acquisition Integrity Office (AIO) including management, direction and coordination of responsibilities of auditing, inspection, and investigative components of the DON. This instruction implements reference (a).

2. Cancellation. SECNAVINST 5430.92B.

3. Background

a. Fraud, waste, and related improprieties, such as theft or misuse of government property and conflicts of interest, are serious matters, which increase costs to the government and reduce resources available to support the operating forces.

b. In December 1978, the President tasked the heads of executive departments and agencies to develop comprehensive plans to use audit and investigation functions to eliminate waste, fraud, and error in government programs. In May 1983, the Secretary of Defense (SECDEF) required all services to designate a single point-of-contact for contract fraud matters. In implementation of the President's policy, the SECDEF's requirements, and in the interests of emphasis and clarity, these measures and responsibilities are herein set forth.

c. In September 2005, the Secretary of the Navy (SECNAV) instituted the DON AIO as the central point of contact on all acquisition fraud matters.

4. Definitions. See enclosure (1).

5. Applicability. This instruction applies to the Office of the Secretary of the Navy, the Chief of Naval Operations (CNO), the Commandant of the Marine Corps (CMC), and all U.S. Navy and U.S. Marine Corps installations, commands, activities, field offices, and all other organizational entities within the DON.

6. Policy. The policy of the DON is to properly manage, free of acquisition fraud, waste, and related improprieties, the resources of the U.S. entrusted to the DON and, by vigorous action, to detect, deter, and eliminate acquisition fraud, waste, and related improprieties whenever they occur. All personnel shall be vigilant to the possibility of such illegal or improper

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acts, and shall report to proper authority, per U.S. Navy regulations, the existence of any improprieties. Commanding Officers and others in authority shall cause inquiries or investigations into such reports to be initiated and, if confirmed by inquiry or investigation, take or cause to be taken disciplinary action or administrative action as will best effectuate the above stated policy. Audit, inspection, and investigative components of the DON will discharge their assigned responsibilities to detect, deter, and eliminate acquisition fraud, waste, and related improprieties occurring within DON.

7. Responsibilities. See enclosure (2).

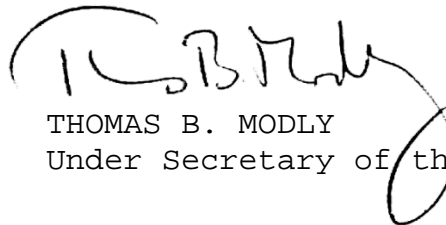
8. Records Management

a. Records created as a result of this instruction, regardless of format or media, must be maintained and dispositioned according to the records disposition schedules found on the Directives and Records Management Division (DRMD) portal page:

<https://portal.secnav.navy.mil/orgs/DUSNM/DONAA/DRM/SitePages/Home.aspx/>.

b. For questions concerning the management of records related to this instruction or the records disposition schedules, please contact your local Records Manager or the DRMD program office.

9. Reports. The reporting requirements contained herein are exempt from reports control by SECNAV M-5214.1, part IV, paragraphs 7(k) and (n), per reference (b).



THOMAS B. MODLY
Under Secretary of the Navy

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DEFINITIONS

As used in this instruction, the following definitions apply:

1. DON. DON is composed of the Office of the Secretary of the Navy; Office of the CNO; Headquarters, Marine Corps; the entire operating forces and reserve components; all field activities, headquarters, forces, bases, installations, activities, and functions under the control or supervision of the SECNAV; and the Coast Guard when it is operating as a service in the Navy.
2. DON Personnel. All U.S. military personnel serving in the DON and all civilian employees of the DON (including those in non-appropriated fund activities).
3. Acquisition. "Acquisition" means the acquiring by contract supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract. The term includes, but is not limited to: the determination of requirements for supplies and services; the test, evaluation, qualification, or selection of particular products or services; the preparation and adoption of procurement specifications and standards; and the award and the administration of Government contracts. These items encompass all appropriated or non-appropriated funded contracts, including research and development contracts, cooperative agreements, other transactions, and grants.
4. Acquisition Fraud. Any willful means of taking or attempting to take unfair advantage of the government that occurs during the acquisition of goods or services for DON, including but not limited to: the offer, payment, or acceptance of bribes or the offer, giving or acceptance of bribes or the offer, giving or acceptance of gratuities; making of false statements, submission of false claims, or use of false weights

or measures; evasion or corruption of inspectors and other officials; deceit either by suppression of the truth or misrepresentation of a material fact; adulteration or substitution of material; falsification of records and books of account; arrangements for secret profits, kickbacks, or commissions; and conspiracy to use any of these devices. It also includes those cases of conflict of interest, criminal irregularities, and unauthorized disclosure of official information, which is, connected with acquisition and disposal matters.

5. Property Disposal. The term includes, but is not limited to: sale, lease, donation, exchange, and abandonment of property for which the DON is responsible.

6. Fraud. Any willful means of taking, attempting, or conspiring to take unfair advantage of the government, including but not limited to: the offer, payment, or acceptance of bribes or the offer, giving or acceptance of bribes or the offer, giving or acceptance of gratuities; making of false statements, submission of false claims, or use of false weights or measures; evasion or corruption of inspectors and other officials; deceit either by suppression of the truth or misrepresentation of a material fact; adulteration or substitution of material; falsification of records and books of account; arrangements for secret profits, kickbacks, or commissions; and conspiracy to use any of these devices. It also includes those cases of conflict of interest, criminal irregularities, and unauthorized disclosure of official information that is connected with acquisition and disposal matters.

RESPONSIBILITIES

1. Assistant General Counsel (Acquisition Integrity). The Assistant General Counsel (Acquisition Integrity), (AGC (AI)), under the direction of the SECNAV and the General Counsel of the Navy (GC) shall:

a. Manage, direct, and coordinate acquisition fraud matters throughout the DON. Serve as the suspending and debarring official for the DON per references (c) and (d).

b. Provide oversight to assure that the DON follows consistent policies and practices in all cases involving acquisition fraud matters.

c. Track, report, and coordinate investigations for all acquisition fraud matters within DON.

d. Manage AIO, establish goals and objectives for AIO and implement those goals, coordinate efforts with governmental counterparts, represent the DON at the Interagency Suspension and Debarment Committee (ISDC) established per reference (e), participate in lead agency coordination with the ISDC per section 873 of reference (f), liaison with congressional staffs, and work with senior industry officials. AIO is organizationally part of the Office of General Counsel (OGC).

e. Act as the centralized organization within DON to monitor and ensure the coordination of criminal, civil, administrative, and contractual remedies for all cases including investigations of acquisition fraud, waste, and related improprieties related to acquisition activities affecting the DON. As the centralized organization for acquisition fraud matters, AIO is the single point-of-contact for all acquisition fraud matters, per reference (a).

f. Receive all reports concerning acquisition fraud, including contractor disclosures referred per reference (g), contract officer terminations for default, and coordinate remedies concerning these cases, with appropriate officials and organizations. Evaluate cases for appropriate administrative action; where appropriate initiate suspension and debarment

actions. Document the basis for any final decision taken pursuant to a formal or informal referral for suspension and debarment per §861 of reference (h).

g. Ensure, in appropriate cases, that a comprehensive remedies plan is developed by the responsible commander, with the participation of the Naval Criminal Investigative Service (NCIS) or other affected investigative or audit organization for each acquisition fraud case. Ensure all remedies are considered and that applicable ones are undertaken promptly by the commanders, program officials, and contracting officers responsible for such actions, after coordination with the Defense Criminal Investigative Organizations (DCIOs) or prosecuting officials, if appropriate.

h. Ensure that recommendations concerning suspension and debarment actions are prepared and provided in a timely manner to initiate exclusion action based upon an indictment, conviction, or fact-based suspension and debarments, and that all such exclusions are entered into the System for Award Management Exclusions per references (c), (d), and (i). Enter administrative agreements executed by the DON into the statutorily required Federal Awardee Performance and Integrity Information System per references (c) and (j).

i. Ensure that for cases when safety or adverse impact on a Department of Defense (DoD) mission can be determined, that such adverse impact is identified and documented, and appropriate safety, procurement, and program officials are notified and kept apprised of developments. Ensure this information is used to develop a remedies plan for each investigative case. Some examples of adverse impact on the DoD mission are: endangerment of personnel or property, monetary loss, denigration of program or personal integrity, compromise of the procurement process, and reduction or loss of mission readiness.

j. Discuss regularly with the NCIS and other assigned DCIOs such issues as the current status of cases and their coordination with prosecuting authorities. Ensure coordination of activities with other DoD components, and Federal agencies, affected by a case per reference (a).

k. Report incidents, by situation reports or periodic summary reports, as appropriate, to SECNAV, fully advising the CNO and CMC about incidents occurring at activities under their respective command and control.

l. Prepare reports on acquisition fraud matters for submission by SECNAV as may be required by the Congress, including metrics required per section 873 of reference (f), or the Executive branch of Government, including the Office of the SECDEF.

m. Develop acquisition fraud training materials to be utilized in acquisition fraud training of DON personnel.

n. Coordinate acquisition fraud, including *qui tam* and affirmative litigation matters with the AGC (Litigation).

o. Maintain liaison with the Department of Justice (DOJ) and coordinate the referral of appropriate cases for criminal, civil, or other legal action in the areas specified in reference (j). Coordinate such liaison in advance with the appropriate criminal investigative organization in those cases where a criminal investigation is pending.

p. Evaluate structural barriers affecting monetary recoveries in all cases resulting in loss to DON and propose legislative reforms to maximize recovery of assets to DON.

q. Task Echelon 2 activities to inspect, investigate, and inquire into acquisition fraud matters within DoD so as to include the assessment of programs for the detection and elimination of acquisition fraud, waste, and related improprieties.

2. Director, NCIS. The Director, NCIS, per references (1) through (p), shall:

a. Conduct criminal investigations pertaining to acquisition fraud and provide a copy of the report of investigation to the AGC (AI) and commander or commanding officer concerned.

b. Conduct criminal intelligence operations related to acquisition fraud per reference (p).

c. Conduct acquisition fraud investigative surveys upon the request of the AGC (AI), Naval Inspector General (NAVINSGEN), or other Inspectors General, as appropriate.

d. Advise and coordinate with the Federal Bureau of Investigation, Defense Criminal Investigative Service, prosecution and debarment authorities, and other civilian and military law enforcement agencies with respect to ongoing acquisition fraud criminal investigations, per references (a) and (l) through (p).

e. Provide written notification to the AGC (AI), in a timely fashion, of the initiation of all acquisition fraud investigations. Such notification shall include the case title, case control number, office of primary responsibility, date opened, predication, and suspected offense(s).

f. Discuss acquisition fraud cases and provide pending or complete reports or summaries of these cases to the AGC (AI) on a regular basis. Discussions and reports should provide assessments of any impact that civil, contractual, or administrative actions under consideration may have on any ongoing investigation or prosecution.

g. Provide copies of acquisition fraud investigative reports to the AGC (AI) where the investigation discloses the existence of conditions that would be of concern during the performance of audits.

h. Support the development of acquisition fraud training materials.

i. Coordinate acquisition fraud investigative or administrative referrals received from DoD elements with DON components, as appropriate.

j. Provide copies of reports to DON components in all cases involving acquisition fraud, waste, and related improprieties associated with acquisition and disposal throughout the DON, as appropriate. Excepted are reports for which distribution is restricted due to grand jury proceedings

or other circumstances requiring that the report not be disseminated.

k. Coordinate matters primarily involving military personnel with the DOJ in appropriate cases and maintain liaison with that agency, keeping the CNO and CMC informed, as appropriate. In cases involving civilian personnel, contractors, or contractor employees, referral and liaison will be coordinated with the GC, AGC (AI), and the Judge Advocate General of the Navy. Coordinate such liaison in advance with the appropriate criminal investigative organization in those cases where a criminal investigation is pending.

3. Auditor General of the Navy. The Auditor General of the Navy (Director, Naval Audit Service), while conducting audits per reference (q), evaluates programs, activities, systems, procedures, and other operations involving the expenditure of funds, utilization of resources, or accomplishment of management objectives. Accordingly, the Auditor General shall:

a. Assign appropriate priority to the scheduling of audits into programs and areas subject to acquisition fraud, waste, and related improprieties.

b. Be mindful during the conduct of such audits of the potential for acquisition fraud, waste, and related improprieties.

c. Report suspected acquisition fraud to NCIS and AIO.

d. Provide final reports of audit findings and recommendations to appropriate commanders, commanding officers, management officials, and the NAVINSGEN. Audit findings pertaining to acquisition fraud shall be provided to AGC (AI).

e. Advise the Under Secretary of the Navy and AGC (AI) in cases where the Auditor General determines that there has been an inadequate final management response to a significant audit finding recommendation, which finding or recommendation involves acquisition fraud matters.

4. Assistant Secretary of the Navy (Financial Management and Comptroller). The Assistant Secretary of the Navy (Financial Management and Comptroller) (ASN (FM&C)) has responsibilities, which include budgeting, accounting, and the development of accounting systems, disbursing, and financing. In addition, ASN (FM&C) provides policy guidance on the DON Management Internal Controls Program. Accordingly, ASN (FM&C) shall:

a. Periodically review the adequacy of accounting, disbursing, financing, and budgeting systems to detect and minimize acquisition fraud, waste, and related improprieties.

b. Advise the AGC (AI) concerning the results of investigations or adjudications, which indicate potential acquisition fraud.

5. General Counsel of the Navy. The GC shall provide legal advice and counsel to the DON in matters regarding acquisition fraud, waste, and related improprieties, per reference (k). The AGC (AI) serves under the supervision and guidance of the GC. DON OGC attorneys supporting headquarters and field commands shall:

a. Provide legal support to acquisition clients tasked with developing a remedies plan.

b. Coordinate with AIO on acquisition fraud matters.

6. Judge Advocate General of the Navy and Staff Judge Advocate to the CMC. Per reference (r), the Judge Advocate General of the Navy, or the Staff Judge Advocate to the CMC, as appropriate, shall provide legal advice and counsel to U.S. Navy or Marine Corps officials on the Uniform Code of Military Justice, the Manual for Courts-Martial, and the Manual of the Judge Advocate General (JAGMAN) as applied to acquisition fraud, waste, and related improprieties. Additionally, appropriate judge advocates shall:

a. Coordinate matters involving acquisition fraud, waste, and related improprieties with other federal agencies, as appropriate.

b. Advise the AGC (AI) and NAVINSGEN concerning all investigations conducted pursuant to the JAGMAN into incidents of acquisition fraud, waste, and related improprieties.

7. Naval Inspector General. The NAVINSGEN, per reference (s), shall forward all acquisition fraud related hotline complaints to AIO for coordination.

8. Other DON Officials, Commanders, and Commanding Officers. All DON personnel shall govern their conduct in accordance with the Joint Ethics Regulation. All commanding officers and others in positions of authority within the uniformed Naval services shall govern themselves per 10 U.S.C. § 5947 and Article 1102, U.S. Navy Regulations. Commanding Officers shall, per Article 0702, U.S. Navy Regulations, be responsible for economy within their commands and require rigid compliance with the regulations governing the receipt, accounting, and expenditure of money and materials. Moreover, officials in positions of authority shall:

a. Request NCIS conduct criminal investigations into major crimes pertaining to acquisition fraud, waste, and related improprieties, as appropriate, per references (l) and (p).

b. Ensure that corrective disciplinary or administrative action is taken, including such actions as may be appropriate notwithstanding a declination of prosecution by civilian law enforcement officials.

c. Furnish information as requested by the AGC (AI) and other DoD officials who may request such information in the lawful exercise of their authority.

d. Ensure that all personnel under their authority are familiar with Articles 1139 and 1140, U.S. Navy Regulations, requiring reports of offenses committed by DON personnel.

e. Provide recommendations for suspension and debarment actions to the AGC (AI) in a timely manner to enable AIO to initiate action upon indictment or conviction.

f. Establish an acquisition fraud point of contact for each command or service.

9. DON Personnel. DON Personnel shall conform to standards of conduct prescribed by the Uniform Code of Military Justice, U.S. Navy Regulations, United States Code, Joint Ethics Regulation, and the lawful directives and orders of their superiors, and promptly report infractions of the same to the proper authority per U.S. Navy Regulations. In this regard, "proper authority" shall include the immediate superior of the person submitting the report or his/her commander or commanding officer, but if either are implicated, an appropriate inspector general, a Special Agent of the NCIS, the DoD or Navy Hotlines, or any other portion of the DoD or NAVINSGEN. All DON personnel shall cooperate with official investigations of possible violations.

10. Remedies Plan. The responsible action commander will draft a comprehensive remedies plan when tasked by AGC (AI). The responsible action commander is the commander primarily responsible for taking judicial, contractual, or administrative action. In the case of multiple responsible action commanders, AIO will establish the coordination of remedies. AIO will provide the basic requirements and format of this plan. If the responsible action commander chooses to add information, this is permissible as long as the basic format of the report is not changed. The plan must be sent through the responsible chain of command to reach AIO within 60 days from the date of the remedies plan request. Remedies plans must be updated in a timely manner as the matters covered by the plan change or remedies are completed. If an investigation or litigation is pending, remedies must be coordinated in advance of implementation with the appropriate investigative or prosecutorial officials.

a. Representatives from the commander's legal staff, contracting offices, and NCIS, or other appropriate criminal investigative organization, shall assist in preparation of the plan and participate in its execution. A representative from contracting will not be required if AIO determines that the case does not have any contracting interests.

b. The responsible action commander may add additional representatives if their participation will enhance the effectiveness of the remedies process.